

MULTI-USE TRAIL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS MULTI-USE TRAIL CONSTRUCTION, WATER QUALITY STRUCTURE, TRAIL LIGHTING AND MAINTENANCE AGREEMENT (the "Agreement") is made this ____ day of May, 2013 by and among City of West Lafayette ("City"), THE TRUSTEES OF PURDUE UNIVERSITY ("Purdue"), and PURDUE RESEARCH FOUNDATION ("PRF"), an Indiana corporation (formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246).

PRF owns certain real estate at the northwest corner of the intersection of Northwestern Avenue and Lindberg Road in West Lafayette, Indiana, upon which Purdue operates the Kampen Golf Course (the "Golf Course").

City desires to use land for this area to construct a multi-use trail that connects parcels from the north, south, and west, construct a water quality structure to allow storm water to outlet to the south dry pond, and construct trail lighting along the trail away from the roadway.

Purdue desires to have access to the multi-use trail system and lighting that is being constructed to connect the immediate areas around this location. Purdue desires that all storm water entering their properties be treated per the Tippecanoe County Stormwater Ordinance.

To address pedestrian connectivity, the parties desire to enter into an agreement to provide for the construction and maintenance of a multi-use path east of the Golf Course for pedestrian use of the surrounding area.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Multi-Use Path. The parties intend that a multi-use path, together with all necessary appurtenances be constructed and maintained on the Golf Course to provide pedestrian connectivity to the surrounding area according to the terms and conditions of this Agreement. The area of the Multi-Use path on the Golf Course is more particularly shown on EXHIBIT A. The Multi-Use Path shall be constructed and maintained on the Golf Course consistent with the general layout of the Golf Course and local, state, and federal ordinances, laws, rules, and specifications pertaining to INDOT Trail Design.

2. Water Quality Structure. The city intends to utilize the KCB southern dry pond as an outlet point for a storm sewer outlet that drains the storm water emanating from Lindberg Road between Northwestern Avenue and Salisbury Street. To meet water quality requirements set by the Tippecanoe County Stormwater Ordinance, a BMP structure will be set upstream of the outlet on the KCB pond property owned by Purdue Research Foundation. The City will be responsible for maintenance and upkeep of this structure including annual cleanouts and monitoring. The city will keep a log of all activities that pertain to maintenance and upkeep of this structure and will furnish to any party requesting the information as proof of upkeep within 48 hours of request.

3. Pedestrian Path Lights. The parties intend that the path away from the roadway crossing the property be lit at night for safety reasons. The lights shall be on 14' ornamental

light pole that matches the style and aesthetics of the lights on Purdue's campus. The city will pay for maintenance and upkeep for these lights as well as electrical power for the lights.

4. Design. The plans and specifications of the multi-use path and its facilities are more particularly shown on construction documents certified by the Schneider Corporation on March 22, 2013 (the "Plans"), as they may be amended from time to time with the prior written approval of the parties, which are incorporated into and made a part of this Agreement by this reference.

5. Approvals. City, at its sole cost and expense, shall obtain any and all licenses, permits, commitments, and approvals required by any local, state and/or federal governmental entity necessary for the construction, use, maintenance and operation of the multi-use path, water quality structure, and trail lights.

6. Construction. City, at its sole cost and expense, shall construct the multi-use path, water quality structure, and trail lights pursuant to the plans in the multi-use path area (the "Work"). The Work will be constructed in three phases. Phase one (1) will be the construction of the west side of Northwestern Avenue including the multi-use path. Phase two (2) will be constructing the east side of Northwestern Avenue. Phase Three (3) will be the construction of the central concrete median along Northwestern Avenue. The Work in the right of entry location shall include, without limitation:

- a. Installing the HMA path (greenway trail) , as shown on associated Sheet 24 of the Plans; (Phase 1)
- b. Installing storm sewer, water quality structure, lighting, landscaping, and irrigation (Phase 2 & 3)

Any improvements, alterations, additions, changes, replacements, or installations in connection with the Work will be performed in a good and workmanlike manner. City shall be solely responsible for the cost of such improvements, alterations, additions, changes, replacements, or installations which are part of the Work. Neither Purdue nor PRF shall be responsible for any loss of any of City's property and/or the property of City's employees, agents, representatives, and/or contractors, from the Golf Course or any areas adjoining the Golf Course or for any damage to such property except when any such loss or damage results directly and proximately from the negligence of the Purdue and/or PRF.

7. Right of Entry. PRF grants to City a temporary right-of-entry over and across the Golf Course for the purpose of permitting City to construct the multi-use path pursuant to the Plans on the Real Estate (the "Work"), and to do such acts as are reasonable and necessary in connection with such Work and subsequent, Maintenance.

8. Maintenance.

- a. Following the original Work, City, at its sole cost and expense, shall be responsible for the maintenance, repair, revision, supplementation, removal, and/or replacement of the multi-use path, water quality structure,

and trail lights with regards to the features and function of these items into perpetuity.

- b. Following the original Work, Purdue will maintain plants and lawn care of the area with the exception of the trail portion. City will maintain plants and lawn care of the trail.
- c. City will conduct the maintenance in a way as to have a minimal impact on uses of and improvements of the Golf Course and the adjoining lands of Purdue and PRF. City shall notify Purdue and/or PRF in writing at least ten (10) business days prior to any regular Maintenance, as well as exercise of its right of ingress and egress to and from the multi-use path, water quality structure, and trail lights over the adjoining lands of Purdue and/or PRF in connection with the Maintenance. City will notify Purdue and/or PRF as soon as possible as to any emergency Maintenance. Except for any emergency maintenance, said advance notice shall include engineering plans for maintenance. Purdue and/or PRF reserves the right to review City plans for maintenance and request any reasonable modification to them that is in accordance to protect the integrity of multi-use path, water quality structure, and trail lights and the adjoining lands of Purdue and/or PRF, and minimize impact thereon. The timing of regular Maintenance shall be conducted in coordination with Purdue and/or PRF as to avoid interference with Purdue and/or PRF's uses of its property.

9. Restoration. City agrees that upon the completion of the Work and/or any Maintenance, City shall restore the multi-use path and any areas of Purdue and/or PRF's property disturbed by City. City shall grade, seed, and mulch the same, closing all excavations with proper backfill and compaction, and replacing, with similar quality or better, any and all then existing improvements, landscaping, driveways, parking lots, sidewalks, drainage tiles, utility lines, and other appurtenances on, under, through, or over the multi-use path area and/or the disturbed areas of Purdue and/or PRF's property at no expense to Purdue and/or PRF.

10. Mechanic's Liens. City agrees to not permit any mechanics' or material men's liens to be levied against the Golf Course or adjoining areas of Purdue and/or PRF's property for any labor or material furnished to City, its employees, agents, representatives, and/or contractors. By signing below, City agrees to indemnify and hold Purdue and/or PRF harmless for any and all claims, obligations, and liabilities, and all costs, expenses, and attorneys fees incurred, based upon any obligation, liability, loss, damage, or expense, of whatever kind or nature, contingent or otherwise, known or unknown, arising out of any act or omission of City, his employees, agents, representatives, or contractors on, related to, or in connection with the multi-use path, water quality structure, trail lights, Golf Course, as well as the any adjoining areas of Purdue and/or PRF's property.

11. Treatment of Stormwater Drainage. City will manage stormwater discharges into the stormwater facility per the City Ordinance Chapter 116 "Storm Drainage and Sediment Control".

12. Indemnification. City shall and will indemnify and save Purdue and/or PRF harmless from and against any and all damage, injuries, losses, claims, demands or costs resulting from the Work and/or the Maintenance by City, its agents, representatives, employees, contractors, or invitees. Further, Purdue shall and will indemnify and save PRF harmless from and against any and all damage, injuries, losses, claims, demands or costs resulting from the Work and/or the maintenance by City and/or Purdue, their respective agents, representatives, employees, contractors, or invitees.

13. Attorneys' Fees. In any action or suit brought by either party to enforce its rights hereunder, the prevailing party in such action or suit shall be entitled to recover its reasonable attorneys' fees and costs in addition to all other relief to which it may be entitled.

14. Notices. All notices and demands which may be or are required to be given by either party to the other hereunder shall be in writing and shall be hand delivered or sent by United States mail, first class postage prepaid, addressed to the respective party at the address which follows or to such other person or to such other place as either party may from time to time designate in writing to the other.

City: City of West Lafayette
609 West Navajo Street
West Lafayette, IN 47906-1937

Purdue: Jim Knapp
Physical and Capital Planning
Freehafer Hall of Administrative Services
401 S. Grant
West Lafayette, IN 47907

PRF: Real Estate Department
1281 Win Hentschel Blvd.
West Lafayette, IN 47906

15. Governing Law. This Agreement is entered into in Indiana and shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana.

16. Binding Effect. The covenants and agreements contained in the foregoing Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, distributees, devisees, legal, and personal representatives, assigns, grantees, and successors in interest.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.


CITY:

CITY OF WEST LAFAYETTE

By: _____

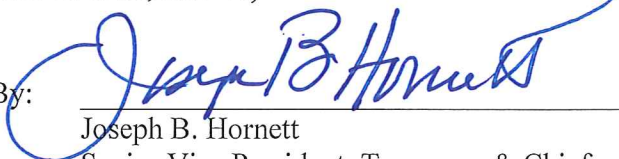
PURDUE:

THE TRUSTEES OF PURDUE UNIVERSITY

By:  _____
A.V. Diaz
Executive Vice President

PRF:

PURDUE RESEARCH FOUNDATION
an Indiana corporation (formed and existing under
the Indiana Foundation or Holding Companies Act,
Acts of 1921, ch. 246)

By:  _____
Joseph B. Hornett
Senior Vice President, Treasurer, & Chief
Operating Officer

